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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/707,410

12/11/2003

John S. McKenzie

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11/25/2005

EXAMINER

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ART UNIT

PAPER NUMBER

3654

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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1. The proposed drawing filed September 21, 2005 has not been approved by the examiner as it introduces new matter. The structure of the C-clamp and its mounting to the floor panel were not part of the original disclosure. The amendment to the specification must which discusses the new matter must be canceled.

2. The drawings remain objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the removable floor panel of claim 11 and the clamp of claim of claim 12, must be shown, or the feature must be canceled from the claims. No new matter may be entered.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 10 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bouza. Bouza shows a pivoting cargo platform for use in a cargo area of a vehicle, in cooperative combination comprising:

a cargo platform base (the base of seat 30; note any platform can be used for cargo) having a substantially rectangular base having four corners; and

a pivoting joint (34) mounted at one corner of the cargo platform base (the seat; note the seat is behind and offset to one side to have joint under a corner of the seat) and the pivoting joint being capable of also being mounted to a vehicle cargo area floor;

thereby providing a cargo platform that pivots between various positions that can be considered as storage positions and loading/unloading positions.

A support member (50) is located opposite the pivoting joint from the platform, as recited in claim 2. The platform is removably mounted under a floor panel (22) which is also removable (inherently), as recited in claims 10 and 11.

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6. Claims 1, 7, 10 and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by McClendon et al. McClendon et al shows a pivoting cargo platform comprising:

a cargo platform base (platform 20) having a substantially rectangular base having four corners; and

a pivoting joint (at either support arm 40) mounted at one corner of the cargo platform base (20) and the pivoting joint being capable of also being mounted to a vehicle cargo area floor (at 74);

thereby providing a cargo platform that pivots from a storage position to a loading/unloading position.

The platform is plastic and the pivot joint portion of the platform base is integral with rest of the platform, as recited in claim 7. The platform is clamped in place, as recited in claims 10 and 12.

7. Claims 1-4, 7 and 10 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hurst. Hurst shows a pivoting cargo platform comprising:

a cargo platform base (tray 14) having a substantially rectangular base having four corners; and

a pivoting joint (15) mounted at one corner of the cargo platform base (the right corner and the left corner as seen in figure 2) and the pivoting joint being capable of also being mounted to a vehicle cargo area floor (inherently due to magnets 19);

thereby providing a cargo platform that pivots from a storage position to a loading/unloading position.

Pull straps (17) are support members located opposite the pivoting joint as recited in claims 3 and 4. The platform is plastic and the pivot joint portion of the platform base is integral therewith, as recited in claim 7. The platform is removably mounted, due the magnets, as recited in claim 10.

8. Claims 1, 2 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Megargle et al. Megargle et al shows a pivoting cargo platform comprising:

a cargo platform base (plate member 72) having a substantially rectangular base having four corners; and

a pivoting joint (at post structure 36) mounted at one corner of the cargo platform base (72) and the pivoting joint being capable of also being mounted to a vehicle cargo area floor (at the lower end of the post);

thereby providing a cargo platform that pivots from positions that can be considered as a storage position or a loading/unloading position.

A platform support member (42) is located opposite the pivoting joint from the platform, as recited in claim 2. It is permanently mounted in the cargo area, to the same degree as applicant's platform, as permanent is a relative term, as recited in claim 9.

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9. Claims 5, 6 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over McClendon et al. McClendon et al shows the basic claimed pivoting platform made of plastic but varies from the claims by not specifying that the plastic is capable of being vacuum formed (claim 5), by injection molding (claim 6), or that the pin at the joints are metal (claim 8). However these would have been obvious design considerations within the level of ordinary skill in the art at the time the invention was made by applicant, since it has been held to be within the general skill of a worker to select a known material on the basis of suitability for the intended use as a matter of obvious design choice, *see In re Leshin*, 125 USPQ 416.

10. Claims 5, 6 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hurst. Hurst shows the basic claimed pivoting platform made of plastic, see column 2, line 44, but varies from the claims by not specifying that the plastic is capable of being vacuum formed (claim 5), by injection molding (claim 6), or that the hinge pin is made of metal (claim 8). However these would have been obvious design considerations within the level of ordinary skill in the art at the time the invention was made by applicant, since it has been held to be within the general skill of a worker to select a known material on the basis of suitability for the intended use as a matter of obvious design choice, *see In re Leshin*, 125 USPQ 416.

11. Applicant argues in the amendment filed September 21, 2005 that the platform of Bouza does not pivot into and out of a cargo area. However it does move into and out of different areas. As the claims do not recite specific limitations for a cargo area, any area which can be occupied by the seat can be used as and considered as a cargo area, and the seat can be moved into and out of this area.

12. Applicant also argues that McClendon is not the claimed platform as it has first and second platforms and it folds open at 90 degrees. However the presence of a second platform does not matter. The claims are anticipated by the reference as it has the structures which are recited in the claims. The fact that the platform carries a second platform or that the platform moves through a ninety degree angle not preclude it from anticipating the claims the claims only require a pivoting joint mounted at a corner. McClendon has two such pivoting joints.

13. Applicant traverses the rejection based upon the reference of Hurst because it has two locking braces which are not required by applicant's present invention and because its hinge is not a pivot joint at a single corner. However the locking braces of Hurst are actually recited in the claims as one is the support member (claim 2) and the other is considered as the recited pull strap (claims 3 and 4). Besides when patent claims are considered, additional structures are permitted in the references. Also the fact that the hinge is mounted to both rear corners of the platform does not detract from the fact that it is mounted at one corner as recited in the claims. Even if the claims recited that the pivoting joint was

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mounted at only one corner, each small segment of the hinge of Hurst would be considered as a joint as to have some joints mounted at just one corner.

14. Applicant traverses the rejection based upon Megargle et al by arguing limitations which are not found in any of the claims. The manner in which the table of Megargle et al moves is not important, as the claims only recite a pivot joint at a corner. The claims fail to specify any type of movement caused by the pivoting joint structure or any type of movement related to the pivoting joint location.

15. The remaining arguments made in the response have been considered, but are not deemed persuasive, as being drawn to features which are not recited in claims. The claims only recite a pivoting joint at a corner of a rectangular platform for moving the platform between any two positions. THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (571) 272-6921. The examiner's supervisor, Ms. Katherine Matecki, can be reached at (571) 272-6951. The new fax number for all patent applications is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas J. Brahan
Primary Examiner
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